REMARKS

I. Status of the Claims

Claims 26-52 are pending in this application. Claim 26 has been amended, support for which can be found in the original claims and generally throughout the specification. *See, e.g.,* page 9, lines 17-20 and claims 53 and 54, which have been canceled by this amendment. Accordingly, new matter has not been added by the amendments.

II. Telephonic Interview

Applicants thank the Examiner for the courtesies extended during the telephonic interview with their undersigned representative on September 23, 2004. During that interview, Applicants' representative and the Examiner discussed adding to the main independent claim the viscosity range and the particle sizes previously recited in claims 53 and 54, respectively. Applicants have made these changes in the foregoing amendments.

III. Rejection Under 35 U.S.C. §103(a)

A. Claims 26-31, 34, 36, 37, 40, 41, 48, 50, 52, and 53 have been rejected under §103(a) as being unpatentable over U.S. Patent No. 4,938,888 to Kiefer et al. ("Kiefer") in view of U.S. Patent No. 4,953,250 to Brown ("Brown"). Applicants continue to respectfully traverse this rejection for the reasons of record, and the following additional reasons.

Further to the many deficiencies outlined during the lengthy prosecution of this application, Kiefer also does not teach or suggests a process for producing a laundry detergent article comprising preparing a detergent formulation comprising a slurry of components having particle sizes ranging from about 1 to about 200 microns. In addition, Kiefer does not remotely suggest the resulting slurry having a viscosity ranging from 4500 to 9000 cps, as presently claimed.

The claimed slurry includes different polymers, as well as components having particle sizes within a particular range, i.e., from about 1 to about 200 microns. As the Examiner correctly acknowledged during the telephonic interview of September 23rd, viscosity of the slurry is affected by many things, including the polymeric materials and the particle size of those materials, neither of which are taught by Kiefer or Brown.

In fact, Brown does not even mention a slurry and certainly not one in which the components have the claimed particle size. Therefore, Brown does not remedy the many deficiencies in Kiefer. For these reasons, Kiefer and Brown do not expressly teach the claimed invention.

In addition, Kiefer cannot inherently teach the claimed invention. Rather, to support a rejection based on inherency, an examiner must provide factual and technical grounds establishing that the inherent feature *necessarily and inevitably* flows from the teachings of the prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int. 1990). That the prior art compound may possibly have the same features as the claimed invention will not substantiate a finding of inherency. Rather, inherency must flow as a necessary conclusion from the prior art, not simply a possible one. *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981) and

Continental Can Co. USA, Inc. v. Monsanto Co., 948 F.2d 1264, 1268-69, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991).

In the present case, the Examiner can not establish that the references inherently exhibit the claimed viscosity properties. In fact, the Examiner's own statement during the interview acknowledge the fact that viscosity values fluctuate depending on various factors, including the type, amount, and particle size of components forming a slurry, including the polymers used.

In addition, it is known that an inherency rejection is generally made under §102, and is almost always improper under §103, especially in a combination rejection. The courts have supported this position in holding that properties inherent in the prior art, if not known at the time of the invention, cannot form a proper basis for rejecting the claimed invention as obvious under 35 U.S.C. §103. See *In re Shetty*, 566 F.2d 81, 86, 195 U.S.P.Q. 753, 756-57 (C.C.P.A. 1977).

The court stated in *Shetty*, in relevant part:

> [T]he inherency of an advantage and its obviousness are entirely different questions. That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.

In re Shetty, 566 F.2d at 86, 195 U.S.P.Q. at 757. *See also In re Naylor*, 369 F.2d 765, 768, 152 U.S.P.Q. 106, 108 (C.C.P.A. 1966) ("[Inherency] is quite immaterial if . . . one of ordinary skill in the art would not appreciate or recognize the inherent result.").

For at least these reasons, the rejection over Kiefer and Brown is improper and should be withdrawn.

B. The Examiner has rejected claims 32, 33, 35-38, 42, 44-46, and 51 under §103(a) as being unpatentable over Kiefer in view of Brown, as applied to claims 26-31, 34, 36, 37, 40, 41, 48, 50, 52, and 53 above, and further in view of U.S. Patent No. 4,170,565 to Flesher ("Flesher"). Applicants respectfully traverse this rejection for the reasons of record, and the following additional reasons.

Like Brown, Flesher does not remedy the above-described deficiencies of Kiefer in that it does even mention a slurry and certainly not one in which the components have the claimed particle size. In fact, Flesher teaches away from the claimed slurry viscosities by teaching the detergent composition as a "thick paste" or an "anhydrous paste." Col. 19, line 65 and col. 20, lines 49-50.

It is well-established that it is improper to combine references if their combination would result in the destruction of the intended operation or if a reference teaches away from the claimed invention. See, *In re Laskowski,* 10 USPQ 2d 1397 (Fed. Cir. 1989). A rejection based on the Flesher reference would clearly teach away from the invention, as claimed, as it is directed to a thick paste rather than a slurry having a viscosity ranging from 4500 to 9000 cps.

For at least these reasons, the rejection over Kiefer in view of Brown and Flesher is improper and should be withdrawn.

C. The Examiner has rejected claims 47 and 49 under §103(a) as being unpatentable over Kiefer in view of Brown and Flesher, as applied to claims 32, 33, 35-38, 42, 44-46, and 51 above, and further in view of U.S. Patent No. 4,113,630 to Hagner et al. ("Hagner"). Applicants respectfully traverse this rejection for at least the

reason that Hagner is cumulative of the previously cited prior art, at least with respect to the above-described deficiencies.

For example, as shown in Example II, Hagner teaches that the detergent composition can take the form of an "anhydrous paste" that is "thinly spread over the surface of one side of the substrate," as opposed to a detergent formulation comprising a slurry having a viscosity ranging from 4500 to 9000 cps. Col. 18, lines 56-60. Like Flesher, Hagner teaches away from the claimed invention by teaching a detergent composition in the form of a paste, rather than a slurry having the claimed viscosity range. For this reason, the Examiner has not established a *prima facie* case of obviousness against claims 47 and 49. Accordingly, the rejection under 35 U.S.C. §103(a) based on Hagner should be withdrawn.

D. The Examiner has rejected claim 39 under §103(a) as being unpatentable over Kiefer in view of Brown and Flesher, as applied to claims 32, 33, 35-38, 42, 44-46, and 51 above, and further in view of U.S. Patent No. 5,196,139 to Moschner ("Moschner"). Admittedly, the Examiner only relies on Moschner for the teaching of the claimed brightener. However, Moschner is not drawn to the claimed process but is directed to a bleach article comprising different components having different properties than presently claimed. Therefore, while Moschner arguably teaches the claimed brightener, it clearly does remedy the above-described deficiencies. Accordingly, the rejection under 35 U.S.C. §103(a) based on this reference should be withdrawn.

E. The Examiner has rejected claim 43 under §103(a) as being unpatentable over Kiefer in view of Brown and Flesher, as applied to claims 32, 33, 35-38, 42, 44-46, and 51 above, and further in view of U.S. Patent No. 5,298,249 to Hani ("Hani"). Hani does not remedy the previously mentioned deficiencies in Kiefer. In fact, the Examiner merely relies upon Hani for the disclosure relating to the claimed biocide. However, Hani is not drawn to detergent- containing laundry sheets, and in that sense is non-analogous art. Rather, Hani is directed to general compositions comprising particular biocides. Col. 1, lines 1-2. Tellingly, of the various compositions in which Hani's biocide can be used, this reference does not mention detergent compositions for laundry articles. Col. 1, lines 35-43. Not surprisingly, therefore, Hani also does not disclose a process for making a laundry sheet, as claimed. As Hani does not remedy the many deficiencies described above, the rejection under 35 U.S.C. §103(a) should be withdrawn.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the application and timely allowance of the pending claims. Please grant any necessary extensions of time required to enter this response and charge any additional required fees to our deposit account no. 06-0916.

Respectfully submitted,

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